

REMARKS

The Examiner rejected claim 29 as being anticipated by Quandt. Applicant now cancels claim 29. The Examiner suggested combining claims depending on rejected claims 21 and 22. Applicant now adds such suggested narrow independent claims 36 and 37. Claim 36 includes all the limitations of claims 21, 23, 25, and 27. Claim 37 includes all the limitations of claims 22, 24, 26, and 28. Applicant traverses the rejection of claims 21 and 22.

The Examiner based his rejection of claims 21 and 22 on anticipation by Kizilos. The 35 USC §102 rejection is respectfully traversed on the grounds that Kizilos does not describe Applicant's invention. "In order to establish anticipation, it is incumbent upon the [Examiner] to identify in a single prior art reference disclosure of each and every element of the claims in issue, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 U.S.P.Q. 481 (Fed. Cir. 1984); *In re Schaumann*, 572 F.2d 312, 197 U.S.P.Q. 5 (C.C.P.A. 1978) (anticipation is measured with respect to the terms of the claims in issue). When the claimed invention is not identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, or the inclusion of options not disclosed in the reference, the reference does not anticipate. *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1480, 1 U.S.P.Q.2d 1241, 1245-46 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909, 107 S.Ct. 2490 (1987) (emphasis added). "Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference

teachings that are not there.” *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 43 U.S.P.Q.2d 1481, 1490 (Fed. Cir. 1997) (emphasis added).

The Examiner asserts that Kizilos discloses a turbine blade capable of assuming a “continuous compound curvilinear” shape, the essence of claims 21 and 22. However, the Examiner did not supply a definition of the critical term. Applicant has found no dictionary definition of that term, but respectfully contends that the term does not apply to the Kizilos blade. The multiple variable deflection thrusters on the trailing edge of a Kizilos blade are capable of being activated to approximate a continuous curve, but the resulting blade is not compound curvilinear.

Applicant has enclosed excerpts of three articles that demonstrate the commonly accepted definition of a compound curvilinear surface. In Exhibits A, B, and C the term clearly applies to surfaces that curve in two directions. Whereas Applicant’s blades curve in two directions, the Kizilos blade curves only in the direction of the airstream. The Kizilos blade has the requisite longitudinal curve that creates the airfoil shape, but it does not curve in the perpendicular transverse direction. Even with its deflectors activated at various angles the Kizilos blade is straight in the transverse direction. The common use of “continuous compound curvilinear” does not apply to the Kizilos blade.

More importantly, the Federal Circuit, in a July 12, 2005 opinion, held that a Specification trumps any extrinsic definition. *Phillips v. AWH Corporation*, 415 F.3d 1303 (Fed. Cir. 2005). The Court wrote that the Specification is the best guide to claim term meanings, and that elevating other meanings of such prominence improperly focuses inquiry on abstract meanings of words. *Id.* at 1321. Thus determination if the shape of Kizilos’ blade can properly

serve as an anticipation reference against Applicant's invention should therefore focus on how "compound curvilinear" should be construed according to the Specification.

Applicant first discusses his blade shape in paragraph 03 of his Specification. There the Gorlov ('137) and Goldberg ('246) turbine blades are mentioned as examples of helical and troposkein shapes approximated by Applicant's invention. Both shapes dictate two-directional curves. Applicant's Figure 3 clearly shows a blade that curves in two directions as an approximation of a helix. Applicant's Figure 4d illustrates the joining of discrete sections to produce a blade that curves in two directions. In paragraph 24 of the Specification Applicant describes the angle of twist that distinguishes his blade from the Kizilos blade. Paragraphs 24 and 25 clearly state that the present invention is an approximation of a helical blade. The Kizilos blade is not helical, and regardless of how the deflection thrusters are deployed, it is not compound curvilinear. Specification paragraph 30 further defines "continuous compound curvilinear" as a shape exemplified by a helix and a troposkein, in effect foreclosing application to a Kizilos blade.

In addition to disclosing all of the claimed elements, an anticipating reference must enable one skilled in the art to practice the invention. See *Key Pharm., Inc. v. Hercon Lab. Corp.*, 981 F.Supp. 299, 310-311 (D.Del. 1997). Applicant respectfully submits that not even one supremely skilled in the relevant art would be enabled by Kizilos to practice Applicant's invention because Kizilos shows no capability whatsoever of his blade to manifest curves in more than one direction. Despite its variable trailing edge, the Kizilos blade is straight, and actually teaches away from Applicant's compound curvilinear design, i.e. "a person of ordinary

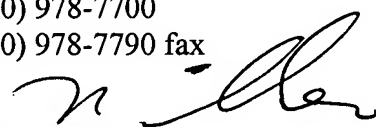
skill, upon reading the reference, would be discouraged ... and led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

The Examiner cited Smith ('846) as prior art teaching a blade with discrete sections that can be formed into a compound curvilinear shape. Applicant respectfully submits that the rotatable sections of the Smith blade are no more than exaggerated versions of the Kizilos deflectors, and do not result in a “continuous compound curvilinear” shape as defined by common usage and Applicant’s Specification.

Request. Applicant respectfully requests reconsideration and placement of all specifications, drawings, and amended claims in condition for allowance. If the Examiner believes a telephone conference would be helpful to allowance, a telephone conference is respectfully requested.

Fee. With this Response Applicant has submitted a check for \$125 to cover a net increase from 35 to 36 total claims and a net increase from 10 to 11 independent claims. If the submitted amount is insufficient, the U.S. Patent and Trademark Office is authorized to charge any fees due, in full or in part, to Deposit Account 07-2400 (P-107269.6).

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